MINISTER OF LABOUR, MALAYSIA

v.

SANJIV OBEROI & ANOR.

SUPREME COURT, KUALA LUMPUR
ABDUL HAMID OMAR LP
MOHD. YUSOF MOHAMED SCJ
AJAIB SINGH SCJ
[CIVIL APPEAL NO. 385 OF 1987]
29 AUGUST 1989

LABOUR LAW: *Industrial Relations Act s. 20(1)(3) - Exercise of Minister of Labour's discretion, ultra vires, direction as to evidence.*

The Minister of Labour appealed against the decision of the High Court which held that his exercise of the discretion afforded under s. 20(3) Industrial Relations Act required him to state his reasons in not referring the representation, made to him by the respondent, to the Industrial Court. The High Court found that the said Minister had acted unreasonably and in so holding ordered the said Minister to file a further affidavit stating his reasons for not referring the said representation to the Industrial Court.

Held:

[1] The Minister had not acted unreasonably. There was no evidence that the Minister had acted in bad faith or that he was biased against the respondent.

[2] The Minister is not required to give any reasons in the exercise of the discretion afforded to him under s. 20(3) of the Industrial Relations Act. The order of the learned Judge was unjustified.

[3] The order of the learned Judge directing the Minister to file a further affidavit stating his reasons, amounted to a direction on evidence. The Court cannot give a direction on evidence unless all litigants desire such direction to be made.

[Appeal allowed with costs].

Case referred to:
Tay Bok Choon v. Tahansan Sdn. Bhd. [1987] CLJ (Rep) 24

Legislation referred to:
Industrial Relations Act 1967, ss. 20(1), (2), (3)

For the appellant - Lim Heng Seng, SFC
For the 1st respondent - Mohan Ghandi; M/s. Lobo & Associates
For the 2nd respondent - V.T. Nathan; M/s. Shearn Delamore & Co.

JUDGMENT

Abdul Hamid Omar LP:

The 1st respondent Sanjiv Oberoi was employed by Genting Berhad as Executive Food & Beverage manager at Genting Highlands Resort with effect from 1 March 1985 on two-year contract in writing. On 21 June 1986 Genting Berhad terminated the contract with effect from 23 June 1986 with 2 months' salary in lieu of notice. This was done by Genting Berhad pursuant to Clause 14(3) of the written contract which states that "either party shall be

entitled, without assigning any reasons thereto, to terminate this contract by giving to the other not less than two (2) months written notice of termination or by paying to the other the equivalent of two (2) months' salary in lieu of notice".

By letter dated 2 July 1986 Sanjiv Oberoi made representations to the Director-General for Industrial Relations under s. 20(1) of the Industrial Relations Act ("the Act") for reinstatement in his former employment. Steps taken by the Director-General to effect a settlement between the parties failed and the Director-General informed the Minister of Labour accordingly on 7 October 1986 under s. 20(2) of the Act that there was no likelihood of the representations being settled.

The Minister of Labour considered the report of the Director-General and in the exercise of his discretion under s. 20(3) of the Act he did not deem it fit to refer the representations to the Industrial Court. Sanjiv Oberoi was informed accordingly by letter dated 25 November 1986.

Sanjiv Oberoi then obtained leave to apply for an order of *certiorari* to have the decision of the Minister dated 25 November 1986 quashed on grounds that the Minister of Labour, in making his decision under s. 20(3) of the Act, acted in excess or without jurisdiction or abuse of his discretion in that he made the said decision without any lawful, valid or reasonable grounds.

The originating motion for *certiorari* came up for hearing before the learned Judge on 12 August 1987. After hearing submissions by the parties, the learned Judge held that the Minister in exercising his discretion must state his reasons on the facts of each particular case. He further added:

> He continues to have discretion and it is not open to the Court to disagree with his reasons unless the reasons given by him are unreasonable. As there is misconception of the law, I direct the Minister to file a further affidavit by stating his reasons why the matter was not referred to the Industrial Court on or before 30 August 1987.

He then adjourned further hearing of the originating motion to a date to be fixed.

The Minister of Labour appealed against this ruling.

We have considered the submissions advanced by Counsel for the parties and have perused the appeal record. And we have unanimously decided to allow the appeal.

As for the learned Judge's order to file further affidavit, we are of the view that the order for further affidavit should only be given in accordance with and under the circumstances permitted under the High Court Rules. The learned Judge's order amounted to a direction about evidence. The authority on this point is clear in that "The Court cannot give a direction about evidence unless all the litigants desire such direction to be made". (See *Tay Bok Choon v. Tahansan Sdn. Bhd.* [1987] CLJ (Rep) 24.)

As for this appeal, we are of the view that on the evidence in this case the Minister of Labour had not acted unreasonably. There is no evidence that the Minister had acted in bad faith or that he was biased against Sanjiv Oberoi. The Minister of Labour is not required to give any reasons when he exercises his discretion under s. 20(3) of the Industrial Relations Act. We hold therefore that the learned trial Judge's direction that the appellant give reasons for not referring Sanjiv Oberoi's representations to the Industrial Court was not justified and we accordingly allow the appeal with costs.

Also found at [1990] 1 CLJ 44